

INITIAL STATEMENT OF REASONS

Aspen Restoration, 2006

[Published July 14, 2006]

Title 14 of the California Code of Regulations (14 CCR),

Amend:

939.15 Protection of Wildlife Habitat [Northern].

959.15 Protection of Wildlife Habitat [Southern].

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to amend Forest Practice Rules (FPR) Title 14, Chapter 4, Subchapter 4,5, and 6, Article 9, § 939.15 Protection of Wildlife Habitat [Northern], and § 959.15 Protection of Wildlife Habitat [Southern].

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

Aspen (*Populus tremuloides*), a native tree species found in the northern and southern Sierra Nevada Mountains, has well documented problems in regrowth, or in forestry terms, regeneration problems. These regeneration problems are highly related to loss of natural disturbance, such as wildfire. In the absence of fire, conifer trees will encroach on the aspen stands, shading the aspen trees and inhibiting regeneration of root clones.

Forest practices which help aspen restoration are one step towards restoring this diverse wildlife habitat in California. Thinning conifers out and away from aspen will help restore this important and limited forest component.

The Forest Practice Rules makes it difficult to restore and regenerate aspen on private lands. The current language at 14 CCR §939.15 Protection of Wildlife Habitat [Northern] and 14 CCR § 959.15 Protection of Wildlife Habitat [Southern] allow for removal of conifers trees in meadow and wet areas by clearcutting for the purpose of habitat improvement. These cutting are exempt from typical forest practice rules which require reforestation (restocking rules) such areas because reforestation would defeat the purpose of removing conifer trees which encroach on meadow habitats. While existing rules provide restoration options for meadow and wet areas, they do not provide such restoration for aspen stands. Currently, persons submitting Timber Harvest Plans that include aspen restoration projects are subject to costly alternative proposals involving substantial justifications as

part of the THP review process in order to perform the aspen restoration activities. Such detail adds substantial additional cost to an already expensive harvest plan.

SPECIFIC PURPOSE OF THE REGULATION

The proposed regulation adds aspen stands to the list of areas that can have conifer tree removal and be exempt from typical restocking standards of the Forest Practice Rules.

§§ 939.15 (page 1 line 8-9) and 959.15 (b) (page 2, line 5-6) add a definition of aspen stands applicable to the proposal. The definition sets a minimum threshold for where the harvesting may occur and ensures appropriate application of the harvesting proposal.

§§ 939.15 (page 1 line 11-16) and 959.15 (b) (page 2, line 8-12) establishes the goal that must be attained as a result of the harvest proposal. Establishing a goal sets the performance standard which must be met and ensures appropriate application of the proposed harvesting.

§§ 939.15 (page 1 line 16-18) and 959.15 (b) (page 2, line 13-14) establish an option for the Board to consider related to disclosure of the aspen regeneration plan. The option would require in addition to a map of the aspen proposal, a description the extent of the area. This description would ensure adequate descriptive detail of the proposal when areas are small and are not communicated well by a map.

§§ 939.15 (page 1 line 18-22) and 959.15 (b) (page 2, line 15-19) establish an option for the Board to consider related to requiring consultation with appropriate governmental agency personnel from the California Department of Fish and Game and Regional Water Quality Control Boards as part of the harvest plan. Consultation ensures appropriate application of the proposed harvesting.

NECESSITY

The necessity of the regulation is as stated in the above section: *PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS*

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has considered several alternatives to the regulation proposed. These include the following:

Alternative #1: Establishment of harvest area limitation.

This alternative would allow for the proposed removal of conifer trees and exemption from the FPR stocking standards, but provides specific prescriptive limitations on the maximum area to be harvested. This alternative was rejected as it imposes subjective prescriptive standards on the maximum size of harvest area without considering unique forest circumstances.

Alternative #2: Impose a maximum tree size harvest limits for conifer tree being harvested to restore aspen habitat.

This alternative would restrict the size of conifer trees that could be harvested and exempt from stocking standards. This alternative was rejected as it sets prescriptive standards for limitations on tree sizes which could be harvested. This arbitrary size limitation would be imposed with no consideration of other factors such as needs for aspen regeneration or number of existing large tree in the area.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has considered potential significant adverse environmental impacts from the proposed action. Such consideration was conducted to meet California Environmental Quality Act (CEQA) requirements for a project by using the functional equivalent certification to an EIR granted to the Board for its rulemaking process. The determination was based on 1) all FPRs remaining in effect; 2) the FPRS have been determined by the Board to result in no potential significant adverse environmental impact; 3) the project does not alter site specific review of environmental impacts as required by the FPRs; and 4) the regulation requires consultation with appropriate governmental agency personnel from the California Department of Fish and Game and Regional Water Quality Control Boards as part of the harvest plan.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Board estimated the regulation should not have any adverse economic impact on any business. The regulation is intended to provide regulatory relief to those submitting Timber Harvest Plans that involve restoring aspen habitats.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has considered alternatives to improve the economic efficiency of the regulation to make it more cost effective for small business to use. These alternatives include specifying non-mandatory review from other responsible agencies prior to approval of the harvesting.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

1. De Byle et al. August, 1985. Aspen Ecology and management in the Western Forest united States. USDA F.S., General Technical Report RM 119.
2. Bartos, D. 2001. Landscape Dynamics in Aspen and Conifer Forests. USFS Rocky Mountain Experiment Station RMRS P-18.
3. Sheppard, W. Techniques to Restore Aspen Forests in the Western U.S. Transaction of the Western Section of the Wildlife Society 40:52-60.
4. June, B. et al. 2005. Removal of Encroaching Conifers to Regenerate Degraded Aspen Stand in the Sierra Nevada. Restoration Ecology vol. 13. No 2.
5. CDF FRAP. 2003. Habitat Diversity. Forest and Rangeland Assessment 2003.
[http://frap.cdf.ca.gov/assessment2003/Chapter1 Biodiversity/habitatdiversity.html](http://frap.cdf.ca.gov/assessment2003/Chapter1_Biodiversity/habitatdiversity.html)

Pursuant to Government Code 11346.2(b)(6): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language are represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations, and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.

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